

**Letter of Findings: 04-20181558
Sales Tax
For The Tax Years 2001-2017**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business did not provide any documentation supporting its position that it was not required to collect and remit sales tax for the years at issue. Therefore, Business did not prove the proposed assessments wrong, as required by statute.

ISSUE

I. Sales Tax—Best Information Available.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-6-8](#); State Form 43760; State Form 56317.

Taxpayer protests the Department's proposed assessment of sales tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which registered as an Indiana retail merchant. In the course of reviewing its records, the Indiana Department of Revenue ("Department") determined that Taxpayer had been acting as an Indiana retail merchant since 2001, but that Taxpayer had not filed any sales tax returns from 2001 through 2017 ("Tax Years"). The Department therefore issued proposed assessments for sales tax, penalties, and interest for those years. Taxpayer protested the proposed assessments and requested that the Department make its decision on the protest without conducting an administrative hearing. This Letter of Findings is therefore based on the materials in the protest file. Further facts will be supplied as required.

I. Sales Tax—Best Information Available.

DISCUSSION

Taxpayer protests the Department's proposed assessments for sales tax for the tax years 2001-17. The Department based its decision to issue the proposed assessments on the basis that on March 14, 2018, Taxpayer filed a BT-1 "Business Tax Application" form (State Form 43760) which listed December 2001 as the start date for Taxpayer's Indiana retail merchant activities, but that Taxpayer had never filed any sales tax returns with the Department. The Department therefore issued proposed assessments for sales tax for the Tax Years based on the best information available. Taxpayer protests that it had no Indiana operations for any of the Tax Years and therefore had no sales tax duties as a retail merchant.

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept.*

of *State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state.* (Emphasis added).

Another relevant statute is IC § 6-8.1-5-1(b), which provides:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (Emphasis added).

Taxpayer protests that it has never had any sales in Indiana to incur a sales tax collection duty. Further, Taxpayer states that requiring it to file zero dollar tax due returns for seventeen years would impose an unnecessary administrative burden on it. Taxpayer's protest letter requests that the sales tax collection duty imposed on retail merchants under IC § 6-2.5-2-1(b) be waived under these circumstances.

The Department notes that, in the course of the protest process, it attempted to contact Taxpayer several times at the telephone number supplied by Taxpayer in its protest letter. Taxpayer did not respond to any of these attempts to contact it. The Department is therefore left with no option other than to make its decision based on the materials provided by Taxpayer in the protest process and on Departmental records. Those materials consist solely of Taxpayer's protest letter, the Protest Submission Form (State Form 56317), copies of the seventeen proposed assessments mailed by the Department to Taxpayer, a note from a Department employee explaining that Taxpayer filed the BT-1 listing March 14, 2001 as its start date for Indiana sales tax collection purposes, and the Department's notes documenting its attempts to contact Taxpayer. There is no other documentation or explanation in the file.

Under these circumstances, the Department has no choice but to determine that Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessments wrong. The only documentation available to the Department is the BT-1 completed and submitted by Taxpayer. The BT-1 constitutes the best information available and forms the basis of the Department's assessments, as provided by IC § 6-8.1-5-1(b). Taxpayer has not rebutted these assessments.

FINDING

Taxpayer's protest is denied.

November 16, 2018

Posted: 01/30/2019 by Legislative Services Agency
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